Supreme Court, U.S.
FILED
99 239 JUN 7 1999
OFFICE OF THE CLERK

No. _____

_____

IN THE

Supreme Court Of The United States

_____

Barbara A. Parrett,
Petitioner

v.

James M. Mize,
Respondent

On Petition for Writ of Certiorari To The Supreme Court of The State of California and California Court of Appeal Third Appellate District

PETITION FOR WRIT OF CERTIORARI

Barbara A. Parrett
8395 La Riviera Drive
Sacramento, Califonria 95826
(916) 388 9874

13PP

Questions Presented for Review

1. Did the California Court of Appeal for the Third Appellate District and the Supreme Court of California deny due process to Petitioner by refusing to allow Petitioner her Constitutional Right to file timely presented written opposition to negative information against Petitioner contained in a non conforming California Rules of Court Appendix and Brief filed by Respondent BAR attorney when said negative information formed the basis for said California Court of Appeal for the Third Appellate District levying and the Supreme Court of California allowing a $5,000.00 sanction against Petitioner?

2. Did the California Supreme Court and the California Court of Appeal for Third Appellate District infringe on Petitioners First Amendment Right to Free Speech by their combined refusal to allow Petitioner the First Amendment Right to file timely presented written opposition to negative information against Petitioner contained in the non conforming California Rules of Court Appendix and Brief filed by Respondent BAR attorney when said negative information formed the basis for said California Court of Appeal for the Third Appellate District levying and the Supreme Court of California allowing a $5,000.00 sanction against Petitioner?

3. Was Petitioner as a Pro Se Appellant denied equal treatment by the Supreme Court of California and the California Court of Appeal for Third Appellate District by said Courts treating Respondent BAR attorney with special status allowing him privileges not disclosed in California Rules of Court or available to Petitioner as a Pro Se Appellant ?

List of Parties

Barbara A. Parrett
8395 La Riviera Drive
Sacramento California 95826
(Phone) 916 388 9874
Petitioner

James M. Mize, attorney.
3620 American River Drive, # 250
Sacramento California 95864
(916) 485 2211
Respondent

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Citation to Record of The California Court of Appeal For The Third Appellate District and the California Supreme Court and Dates Entered

Citations herein are to California Court of Appeal Third Appellate District # 3 Civil CO 27837. California Supreme Court case # SO76078.

Decision by California Supreme Court for case SO76078, # 3 Civil CO27837 issued on March 9, 1999. App. 6

Decision by California Court of Appeal for Third Appellate District for case # 3 Civil CO27837 issued on December 30, 1998 denying Petitioner's petition for rehearing. App. 5

Decision by California Court of Appeal for Third Appellate District for case # 3 Civil CO27837 issued on December 8, 1998 dismissing Petitioners Appeal and sanctioning her $5,000.00. App. 3

Decision by California Court of Appeal for Third Appellate District for case # 3 Civil CO27837 issued May 27, 1998 denying to Appellant filing of a non conforming reply appendix and amended reply brief. App. 2

Decision by California Court of Appeal for Third Appellate District for case # 3 Civil CO27837 issued April 7, 1998 deferring Appellant's motion to correct (strike) portions of respondent's supplemental appendix and portions of respondent's brief. App. 1

Petitioner seeks review of all the above since they all relate to the same issue of denial of due process.

Statutory Provision Conferring Jurisdiction

Statutory jurisdiction of this case is invoked pursuant to 28 U.S.C. 1257 because the record shows that Petitioner has exhausted all remedies at the California State Court level and has not been given relief therein from the factual denial of due process which resulted in her being sanctioned $5,000.00. Petitioner has no other recourse in the ordinary course of litigation.

Constitutional Provisions Upon Which Petitioner Relies

Article I Section Seven (7) of the California Constitution states;

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;

Article II Section One (1) of the California Constitution states;

§ 1. Supremacy of federal constitution

The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.

Amendment V of the United States Constitution states;

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law;** nor shall private property be taken for public use, without just compensation.

Amendment XIV Section 1 of the United States Constitution states;

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

The First Amendment to the United States Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Facts of Case in Support of Petition for Writ of Certiorari

1. On March 12, 1998 Respondent supplied to California Third District Court of Appeal # 3 Civil CO27837 a RESPONDENT'S SUPPLEMENTAL APPENDIX wherein was contained non conforming documents that did not pertain to the Sacramento Superior Court case 95AS00452 appealed from .

2. On March 26, 1998 Petitioner Parrett in California Third District Court of Appeal # 3 Civil CO27837 filed a document styled **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"**, and **"Points and Authorities in Support of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"**, wherein Appellant sought to strike the non conforming non pertinent documents contained in RESPONDENT'S SUPPLEMENTAL APPENDIX. App. 8 & App. 10

3. On April 7, 1998 the California Third District Court of Appeal # 3 Civil CO27837 issued a ruling stating that Petitioner's **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"**, is deferred pending calendaring and assignment of the panel. App. 1

4. On April 30, 1998 Petitioner filed with the California Third District Court of Appeal # 3 Civil CO27837 a document styled **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** wherein she requested that if the Court of Appeal for the Third Appellate District does not rule on her **"Notice of Motion to**

Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief" until after her Reply Brief is filed, she be given leave to file a non conforming Reply Appendix and Reply Brief. App. 16

5. On May 27, 1998 Petitioner's **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** was denied by the California Third District Court of Appeal # 3 Civil CO27837. App. 2

6. Thereafter on December 8, 1998 the California Third District Court of Appeal # 3 Civil CO27837 denied Petitioner's deferred **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief".** App. 3

7. On December 23, 1998 Petitioner timely filed with the California Third District Court of Appeal # 3 Civil CO27837 Petition for Rehearing for the December 8, 1998 decision. App. 18

8. On December 30, 1998 Petitioner's Petition for Rehearing of the California Third District Court of Appeal # 3 Civil CO27837 December 8, 1998 decision denied. App. 5

9. On January 13, 1999 Petioner timely filed Petition for Writ of Review with California Supreme Court. App. 22

10. On March 9, 1999 California Supreme Court denied Petitioner's Writ of Review. App. 6

11. Accordingly, Petitioner has been severely prejudiced by the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 and California Supreme Court case SO76078 accepting the non conforming non pertinent documents supplied by Respondent and not allowing Petitioner the opportunity to file papers in opposition thereto as she requested leave to do in her April 30, 1998 document styled **"Application for Leave to File a**

Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief".

12. The documents Petitioner would have offered in opposition to the non conforming non pertinent documents which the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 allowed Respondent to file would have included rulings from the United States District Court for the Eastern District of California and other relevant documents that would have shown that Respondents non conforming and non pertinent documents allowed by the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 would not have supported an interpretation by the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 that said documents "demonstrate that Parrett has engaged in a campaign of harassment and delay, thereby supporting Mize's request for sanction on appeal". App. 3

13. The papers that Petitioner would have provided to the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 , if that Court would have granted Petitioner's **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"**, would have shown that the non conforming non pertinent documents that were supplied by Respondent were in fact for the **purpose of delay and harassment of Petitioner** and will more than act as an offset to the $5,000.00 sanctions levied against her.

Summary of Facts of The Case in Support of Writ of Certiorari

14. Petitioner was sanctioned $5,000.00 by the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 on March 8, 1998 based on the non conforming and non pertinent documents which that Court allowed Respondent to include in his "Respondent's Supplemental Appendix" and to be referred to in his "Respondent's Brief". The record shows that the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 did not

grant Petitioner's request for opportunity to augment her "Appellant's Appendix" or to file an "Amended Reply Brief" in opposition to the non conforming documents which the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 allowed Respondent to include in his "Respondent's Appendix" as referred to in his "Respondent's Brief' and upon which the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 based it's decision to levy $ 5,000.00 sanctions against Petitioner.

15. The March 8, 1998 action of the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 in sanctioning Appellant $5,000.00 based on non conforming and non pertinent documents contained in "Respondent's Supplemental Appendix" and "Respondent's Brief" which were allowed by the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 while at the same time the Court of Appeal for the Third Appellate District within same case # 3 Civil CO27837 refused to allow Appellant her First Amendment Constitutional Right to file timely presented written augmented opposition to the non conforming and non pertinent documents contained in "Respondent's Supplemental Appendix" and "Respondent's Brief" is an action in derogation to the California Constitution and the Constitution of the United States.

16. Pursuant to the facts stated herein the Court of Appeal for the Third Appellate District case # 3 Civil CO27837 has ordered Petitioner to be deprived of $5,000.00 property without due process guaranteed to Petitioner under the California Constitution Article I Section Seven (7) (a) and Article II therein and the United States Constitution Amendments V and XIV and in violation of Petitioner's First Amendment Rights to Free Speech. Thereafter the California Supreme Court under case SO76078 failed to protect Petitioner's Constitutional Rights.

Opinions Below and Stage of Proceedings

17. App. 1 - 6 & App. 7

Argument Amplifying Reason For Allowance of Writ of Certiorari

18. Rule 10 allows for Writ of Certiorari for compelling reasons pursuant to (a), (b) & (c) therein relating to conflict with Federal Appellate Court decisions, State Court decisions and decision of the United States Supreme Court. It is axiomatic that denial of Due Process and Free Speech is in conflict with numerous decisions of all the courts mentioned under Rule 10 (a) (b) & (c). Accordingly, the record in this case shows that Petitioner has been denied Due Process and Free Speech Rights by California Court of Appeal for Third Appellate District # 3 Civil CO27837 and California Supreme Court # SO76078 and has no other remedy left in the ordinary course of litigation but through Writ of Certiorari with this Court.

Relief Requested

19. Petitioner requests this court take the appropriate steps to reverse or modify the decisions by the Court of Appeal for the Third Appellate District # 3 Civil CO27837 and California Supreme Court SO76078.

Respectfully Submitted by:
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8395 La Riviera Drive
Sacramento California 95826
(916) 388 9874
(916) 388 9875 (fax)

Petitioner Pro Se

Index to Appendix Materials

Decision from Court of Appeal of the State of California IN AND FOR THE THIRD APPELLATE DISTRICT, dated April 7, 1998 App. 1

Decision from Court of Appeal of the State of California IN AND FOR THE THIRD APPELLATE DISTRICT, dated May 27, 1998 App. 2

Decision from Court of Appeal of the State of California IN AND FOR THE THIRD APPELLATE DISTRICT, dated December 8, 1998 App. 3

Decision from Court of Appeal of the State of California IN AND FOR THE THIRD APPELLATE DISTRICT, dated December 30, 1998 App. 5

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Rule 14.1(i)(v) & (g)(i) Disclosure App. 7

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IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

FILED
APR 7,1998
COURT OF APPEAL THE DISTRICT
ROBERT L. LISTON, Clerk

BARBARA A. PARRETT
Cross-Complainant And Appellant

v.

JAMES M. MIZE
Cross-Defendant And Respondent

CO27837
Sacramento County
No. 95AS00452

By the Court:

Decision on appellant's motion to correct (strike) portions of respondent's supplemental appendix and portions of respondent's brief, and motion for monetary sanctions is deferred pending calendaring and assignment of the panel.

Appellant's reply brief is due to be served and filed on or before April 27, 1998.

Dated: April 7, 1998

PUGLIA, P.J.

App. 2

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

FILED

MAY 27,1998

COURT OF APPEAL THE DISTRICT
ROBERT L. LISTON, Clerk

BARBARA A. PARRETT
Cross-Complainant And Appellant

v.

JAMES M. MIZE
Cross-Defendant And Respondent

CO27837
Sacramento County
No. 95AS00452

BY THE COURT:

Appellant's application for leave to file non conforming reply appendix and for leave to file an amended reply brief is denied.

Dated; May 27, 1998

PUGLIA, P.J.

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

BARBARA A. PARRETT Cross-Complainant and Appellant	)	3 Civ. CO27837 (Super. Ct. No.95AS00452)
v.	)	FILED
JAMES M. MIZE Cross-Defendant and Respondent	)	DEC - 8,1998 COURT OF APPEAL THE DISTRICT ROBERT L. LISTON, Clerk

In Support of his assertion that this appeal is frivolous because it was prosecuted for an improper motive, i.e., to harass him or delay the effect of the judgment, Mize points to (1) the history of this case concerning Parrett's attempt to avoid paying him attorney fees, and (2) other documents submitted by Mize, indicating Parrett has engaged in other frivolous litigation against him and has been declared a vexatious litigant. [5]

[5] Parret has moved to strike these documents on the ground that they are not part of the record in the trial court concerning its order denying the motion to vacate. However, as Mize points out in his opposition to Parrett's motion to strike, these documents are not submitted in an attempt to establish the propriety of the trial court's ruling. Rather, the documents are intended to demonstrate that

Parrett has engaged in a campaign of harassment and delay, thereby supporting Mize's request for sanctions on appeal. Accordingly, Parrett's motion to strike these documents is denied.

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

FILED
DEC 30,1998
COURT OF APPEAL THE DISTRICT
ROBERT L. LISTON, Clerk

BARBARA A. PARRETT
Cross-Complainant And Appellant

v.

JAMES M. MIZE
Cross-Defendant And Respondent

CO27837
Sacramento County
No. 95AS00452

BY THE COURT:

Appellant's petition for rehearing is denied.

Dated; December 39, 1998

PUGLIA, P.J.

App. 6

Third Appellate District No. CO27837
SO76078

IN THE SUPREME COURT OF CALIFORNIA

BARBARA A. PARRETT, Appellant

v.

JAMES M. MIZE, Respondent

SUPREME COURT
FILED
MAR - 9 1999
Robert Waldruff Clerk

Deputy

Petition for Review DENIED.

GEORGE

Chief Justice

Rule 14. 1 (i)(v) & (g)(i) Disclosure

Petitioner seeks Writ of Certiorari from final decisions by California Supreme Court for case SO76078, 3 Civil CO27837 issued on March 9, 1999, decision by California Court of Appeal for Third Appellate District for case 3 Civil CO27837 issued on December 30, 1998 denying Petitioner's petition for rehearing and decision by California Court of Appeal for Third Appellate District for case #3 Civil CO27837 issued on December 8, 1998 dismissing Petitioners Appeal and sanctioning her $5,000.00.

The Constitutional Issue of Denial of Due Process was first raised by Petitioner on April 7, 1998 in the document **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"**, and again on April 30, 1998 in the document **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** in California Court of Appeal for Third Appellate District # 3 Civil CO27837. The issue was then raised in the California Supreme Court on Petition for Review under case # SO76078. California Supreme Court denied Petition for Review without comment. Both the California Court of Appeal for Third Appellate District # 3 Civil CO27837 and the California Supreme Court # SO76078 absolutely failed to address, mention or discuss the Constitutional questions raised by Petitioner in the original appeal, the Petition for Rehearing before the California Court of Appeal for Third Appellate District # 3 Civil CO27837 or in the Petition for Review before the California Supreme Court # SO76078. Petitioner cannot cite quotations on the part of either the California Court of Appeal for Third Appellate District # 3 Civil CO27837 or the California Supreme Court # SO76078 from specific portions of the record because both Courts completely ignored even mentioning either the California Constitution or the United States Constitution in any of it's decisions under either case # 3 Civil CO27837 or # SO76078 even when repeatedly raised by Petitioner. One would think that the Constitution no longer applies in the State Courts of California.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE THIRD APPELLATE DISTRICT

Barbara A. Parrett Defendant,Cross/Complainant and Appellant	)	No. 3 CIVIL CO27837 Sacramento Superior # 95AS00452
vs.	)	Motion to Correct, [Rule 12 (b)]
James Mize, Cross-Defendant and Respondent	)	

Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief.

Notice to All Parties:

1 Appellant Barbara A. Parrett seeks an order from this Appellate Court correcting portions of Respondent's Brief and Respondent's Supplemental Appendix to wit, documents titled and page numbered: Summons and Complaint for Legal Malpractice and Complaint for violations of provisions of 15 U.S.C. Chapter 41, pages 96 - 100; Notice of Motion and Motion for an Order Declaring Plaintiff to be a Vexatious Litigant and Requiring Her to Post Security, pages 135 - 136; Request for judicial Notice, pages 137 - 139; Memorandum of Points and Authorities in Support of Motion for an Order Declaring Plaintiff to Be a Vexatious Litigant and Requiring Her to Post Security, pages 140 - 296; Declaration of Sharon B. Futerman in Support of Motion for an Order Declaring Plaintiff to Be a Vexatious Litigant and Requiring Her to Post Security, pages 297 - 305; Ex Parte Application for Extending Page Limitation for Memorandum of Points and Authorities in Support of Motion for an Order Declaring Plaintiff to Be a Vexatious Litigant and Requiring Her to Post Security; Declaration

of Sharon B. Futerman and Order, pages 306 - 308; Amended Proof of Service, pages 302 - 310, **on the grounds** that the heretofore listed subject documents cannot be part of this Appeal 3 CIVIL CO27837, (Sacramento Superior Court case # 95AS00452), because the heretofore listed documents bear a lower court case number of Sacramento County Superior Court Case # 97AS05479 with a filing date of March 5, 1998.

2 Also, Appellant seeks an Order from this Appellate Court correcting, (striking), portions of Respondent's Brief to wit: page 2, lines 19 - 28; page 4, lines 26 - 28; page 5, lines 1 - 9; page and page 30, line 9 on the grounds that the heretofore listed portions of Respondent's Brief makes reference to the heretofore, (paragraph 1), listed subject documents that cannot be a part of this Appeal 3 CIVIL CO27837, (Sacramento Superior Court case # 95AS00452).

3 This Motion to Correct, (Strike), will be based on Respondent's Supplemental Appendix, Respondent's Brief and the Points and Authorities filed concurrently herewith.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE THIRD APPELLATE DISTRICT

Barbara A. Parrett Defendant,Cross/Complainant and Appellant	)	No. 3 CIVIL CO27837 Sacramento Superior # 95AS00452
vs.	)	Motion to Correct, [Rule 12 (b)]
James Mize, Cross-Defendant and Respondent	)	

Points and Authorities in Support of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief.

1 Comes now Appellant who herein offers the following Points and Authorities in Support of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief;

2 The documents contained in Respondent's Supplemental Appendix titled and page numbered; Summons and Complaint for Legal Malpractice and Complaint for violations of provisions of 15 U.S.C. Chapter 41, pages 96 - 100; Notice of Motion and Motion for an Order Declaring Plaintiff to be a Vexatious Litigant and Requiring Her to Post Security, pages 135 - 136; Request for judicial Notice, pages 137 - 139; Memorandum of Points and Authorities in Support of Motion for an Order Declaring Plaintiff to Be a Vexatious Litigant and Requiring Her to Post Security, pages 140 - 296; Declaration of Sharon B. Futerman in Support of Motion for an Order Declaring Plaintiff to Be a Vexatious Litigant and Requiring Her to Post Security, pages 297 - 305; Ex Parte Application for Extending Page Limitation for Memorandum of Points and Authorities in Support of Motion for an Order Declaring Plaintiff to Be a Vexatious Litigant and Requiring Her to Post

Security; Declaration of Sharon B. Futerman and Order, pages 306 - 308; Amended Proof of Service, pages 302 - 310, **cannot be part of or included in an Appellate Appendix for this case** because the case number on the heretofore listed documents is Sacramento Superior Court case # 97AS05479 and the case that this Appeal # 3 CIVIL CO27837 was taken from is Sacramento Superior Court case # 95 AS00452.

The Documents Listed in Previous Paragraph 2 do not Comport With Portions of Requirements of Rule of Court 4.5, Rule of Court 5 or Rule of Court 5.1, therefore Respondent's Supplemental Appendix must be corrected pursuant to Rule 12 (b).

3 Appellant elected to prepare an Appendix pursuant to Rule 5.1 which states in pertinent parts;

Rule 5.1. Appendices or joint appendix in lieu of clerk's transcript

(a) [Notice of election]Within 10 days after filing the notice of appeal, any party may serve and file with the clerk of the superior court notice of an election to proceed under the provisions of this rule, rather than under rule 5. This rule shall thereupon govern unless otherwise ordered by the superior court for good cause shown, upon noticed motion served and filed within 10 days after service of the notice of election. The notice of election and the notice to prepare the reporter's transcript may be included in the same document, and both notices may be included in the document containing the notice of appeal.

(b) [Contents of appellant's or joint appendix]An appendix prepared by the appellant or jointly by the parties to the appeal shall contain copies of (1) those documents listed as items (1) through (5) in subdivision (d) of rule 5; (2) such other documents listed in subdivision (d) of rule 5 as are essential to the proper consideration

of the issues, including such documents as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised; (3) the appellant's notice of election to proceed under the provisions of this rule; (4) any motion opposed to proceeding under this rule, documents filed in connection with the motion, and the court's ruling thereon; (5) in the case of a joint appendix, the stipulation designating its contents; and (6) required indices.

4 It is apparent pursuant to Rule 5.1 (b) (1) above that the contents of the Appendix are in relation to and pursuant to Rule 5 (d) which states in pertinent part:

Rule 5. Clerk's transcript and original papers

(d) [Preparation of clerk's transcript]

Within 30 days after the appellant has deposited the estimated cost of the transcript, as provided in subdivision (c), the clerk shall prepare an original and one copy of a transcript, as provided in rule 9, and certify the original, consisting of:

The following, whether designated in the notices of the parties or not: (1) the notice of appeal; (2) the notices or stipulations to prepare the clerk's transcript and the reporter's transcript, if any, and the notices or stipulations for the preparation of a settled statement or agreed statement, if any; (3) the judgment appealed from, with an endorsement by the clerk showing the date notice of entry was mailed by the clerk or served by a party; (4) the pretrial order, if any, whenever the judgment roll or any part has been designated by the parties; (5) any notice of intention to move for a new trial or motion to vacate the judgment, and the ruling thereon, if any.

The following, if they have been designated by any of the parties: (6) the judgment roll, or any part thereof; (7) any other papers,

records, or affidavits (other than exhibits admitted in evidence or rejected) on file or lodged with the clerk; (8) any written instructions given or refused; (9) exhibits admitted in evidence or

rejected that the parties have directed to be copied. When written instructions given or refused are included, the transcript shall indicate for each instruction (1) the party requesting it or that it was given on the court's own motion, (2) the number assigned to it by the court or if none, the number assigned by the party requesting it, (3) whether it was given or refused, (4) any reason for refusal endorsed by the court on the instruction, and (5) what modifications, if any, were made by the court in giving a requested instruction.

5 It is apparent that the documents referred to in Rule 5 (d) are documents for a **case** wherein the Record on Appeal is prepared by the Court clerk as defined by Rule 4.5 which states:

Rule 4.5. Clerk's record on appeal—definition

The clerk's record on appeal consists of all papers filed or lodged with the clerk of the superior court, all minutes in the **case**, all written instructions tendered by any party (whether given or refused) or prepared by the court, and all exhibits admitted into evidence or refused. It includes, but is not limited to, the items enumerated in subdivisions (a) and (d) of rule 5.

6 Furthermore, the only documents allowed in Respondent's Supplemental Appendix are documents which **could have been** included in Appellant's Appendix pursuant to Rule 5.1 (f) which states:

Rule 5.1. Appendices or joint appendix in lieu of clerk's transcript

(f) [Respondent's appendix]A respondent's appendix may be served and filed no later than the respondent's brief, and may contain any document which could have been, but was not, included in the appellant's appendix.

7 The file date for the documents listed in previous paragraph 2 have a date Filed Endorsed stamp of March 5, 1998 for Sacramento Superior Court case #97AS05479.

8 The appeal in this case was filed on October 7, 1997 for Sacramento Superior Court case #95AS00452 therefore Appellant could not have included the listed documents even if she wanted to.

Request to Correct, (Strike), Respondent's Supplemental Appendix Pursuant to Rule 12 (b)

9 Previous paragraphs 1 - 8 show undeniably that the listed documents cannot be part of the Appellate Record for this Appeal # 3 CIVIL CO27837.

10 Accordingly, Appellant requests the reviewing court correct, (strike), the listed documents in previous paragraph 2 pursuant to Rule 12 (b) which states;

Rule 12. Augmentation and correction of record

(b) [Correction]If any material part of the record, or of any transcript or appendix, is incorrect in any respect, or lacks proper certification, the reviewing court, on suggestion of any party or on its own motion, may direct that it be corrected or certified.

Request to Correct, (Strike), Respondent's Brief

11 Respondent's Brief makes reference to the listed documents subject to correction, (previous paragraph 2), on pages and lines to wit: page 2, lines 19 - 28; page 4, lines 26 -28,, page 5 lines 1 - 9; page 11, lines 9 -10, page 30, line 9.

12 Pursuant to the previous paragraphs 1 - 11 it is apparent that the listed documents in previous paragraph 2 cannot be a part of the Respondent's Supplemental Appendix accordingly, Appellant requests the Appellate Court correct, (strike), the portions of Respondents Brief listed in previous paragraph 11 that makes reference to the listed documents in previous paragraph 2 .

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE THIRD APPELLATE DISTRICT

Barbara A. Parrett Defendant, Cross/Complainant and Appellant	)	No. 3 CIVIL CO27837 Sacramento Superior # 95AS00452
vs. James Mize Cross-Defendant and Respondent	)	Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief.

Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief.

Notice to All Parties:

1 Appellant Barbara A. Parrett requests leave to file a Non Conforming Reply Appendix and for leave to file an Amended Reply Brief on the following grounds that; (1) On 3/12/98 Respondent filed a Respondent's Brief that makes reference to Respondent's Appendix wherein are contained documents that do not comport with requirements of Rules of Court 4.5, 4, 5.1 & 46 in that Respondent's Appendix is non conforming because it contains documents from another lower court case that cannot be part of this appellate record, (2) On 3/26/98 Plaintiff filed a Motion to Correct (Strike) the portions of Respondent's Appendix which are non conforming and which cannot be a part of this appellate record and portions of Respondent's Brief that make reference to portions of Respondent's Appendix that are non conforming and which cannot be part of the Appellate Record, (3) On 4/7/98 this court deferred ruling on Plaintiff's Motion to Correct (Strike) but ordered Plaintiff to file Reply Brief by 4/27/98, (4) Appellant will be severely prejudiced because she has complied with Rules of Court by not filing a non conforming Reply Appendix containing

documents that would stand to refute, rebut and oppose the documents in Respondent's Appendix that are the subject of Appellant's Motion to Correct (Strike) filed with this court on 3/26/98.

2 Therefore in the interest of justice and equity, Appellant requests that if the Appellate Court will not grant Appellant's Motion to Correct (Strike) portions of Respondent's Appendix and Brief , which decision on said Motion was deferred until after the date Appellant was ordered to file her Reply Brief, she be given leave to file a Non Conforming Reply Appendix and Leave to file an Amended Reply Brief.

IN THE COURT OF APPEAL OF CALIFORNIA THIRD APPELLATE DISTRICT

Barbara A. Parrett, Defendant, Cross Complainant and Appellant. v. James M. Mize, Cross Defendant and Respondent	Appellate Number: 3 Civil CO27837 Sacramento Superior (# 95AS00452)

APPELLANT'S PETITION FOR REHEARING OF THE COURT'S DECEMBER 8, 1998 DECISISON

Petition for Rehearing
Parrett v. Mize
(Case # 3 CIVIL CO 27837)

1 On December 8, 1998 this court entered a ruling dismissing Appellant's Appeal and levying $5,000.00 sanctions against Appellant for prosecuting a frivolous appeal.

Request for Retention of Jurisdiction Until All Issues Settled.

10 This court issued it's decision on December 8, 1998 and retains jurisdiction for 30 days pursuant to Rule 24.

11 Appellant herein requests the reviewing court retain jurisdiction and hold remittitur under Rule 25 (c) and to reopen the case to allow appellant to provide documents that are relevant to an

opposition to the documents that the court allowed Respondent to file over Appellant objections, to wit;

12 Respondent supplied to this court a RESPONDENT'S SUPPLEMENTAL APPENDIX wherein was contained documents that did not pertain to this appeal.

13 On March 26, 1998 Appellant filed a document styled **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"**, wherein Appellant sought to strike the non pertinent documents contained in RESPONDENT'S SUPPLEMENTAL APPENDIX.
(See the Court file for case #3 CIVIL CO27837)

14 On April 7, 1998 the court issued a ruling stating that Appellant's **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"**, is deferred pending calendaring and assignment of the panel. (See the Court file for case #3 CIVIL CO27837)

15 On April 30, 1998 Appellant filed a document styled **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** wherein Appellant requested that if the court does not rule on her **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"** until after her Reply Brief is filed, she be given leave to file a non conforming Reply Appendix and Reply Brief. (See the Court file for case #3 CIVIL CO27837 for document **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief" page 2 lines 9-13**)

16 On May 27, 1998 Appellant's **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** was denied by this court. (See the Court file for case #3 CIVIL CO27837)

17 The court's ruling of December 8, 1998 denied Appellant's deferred **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"** (Exhibit 1, page 17 footnote 5)

18 Accordingly, Appellant has been severely prejudiced by this court accepting the non pertinent documents supplied by Respondent, (Exhibit 1, page 17 footnote 5), and not allowing Appellant the opportunity to file papers in opposition thereto as she requested leave to do in her document styled **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"**.

19 The documents Appellant will offer in opposition to the non pertinent documents that this court has allowed Respondent to file will include rulings from the United States District Court for the Eastern District of California and other relevant documents that will show that Respondents non pertinent documents allowed by this court, (Exhibit 1 page 17 footnote 5), will not support an interpretation by this court that said documents ***"demonstrate that Parrett has engaged in a campaign of harassment and delay, thereby supporting Mize's request for sanction on appeal".*** (Exhibit 1 page 17 footnote 5)

20 The papers that Appellant will provide will show that the non pertinent documents that were supplied by Respondent were in fact for the purpose of delay and harassment of Appellant and will more than act as an offset to the $5,000.00 sanctions levied against Appellant.

Summary

21 Appellant was sanctioned $5,000.00 by this court for an alleged error which was also made by Respondent attorneys.

22 The record shows this court based at least part of it's decision to levy sanctions on the non pertinent documents the court allowed Respondent to file.

23 The record shows that the court did not and has not allowed Appellant the opportunity to file papers in opposition to the non pertinent documents the court allowed Respondent to file and upon which the court based at least part of it's decision to levy sanctions against Appellant.

24 The record shows that the trial court ordered that the judgment appealed from became final and appealable on August 28, 1997 and that the appeal was timely.

Relief Requested

25 Appellant requests this court reverse it's ruling of the $ 5,000.00 sanctions against Appellant, or in the alternative, Appellant requests the court reopen the case to allow appellant the opportunity to file papers in opposition to the non pertinent documents the court allowed Respondent to file and upon which the court based part of it's ruling.

26 Appellant requests the court find that the appeal was and is timely based on the trial court's order that the judgment appealed from became final on August 28, 1997 and that the appeal was timely filed and prosecuted.

SUPREME COURT FOR THE STATE OF CALIFORNIA

Barbara A. Parrett

Cross Complainant
Appellant/Petitioner

V

James M. Mize
Cross Defendant
Respondent

Appellate Number: 3 Civil CO27837

(Sacramento Superior
#95AS00452)

PETITION FOR REVIEW TO THE SUPREME COURT FOR THE STATE OF CALIFORNIA ON A DECISION FROM THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA FOR THE THIRD APPELLATE DISTRICT ON AN APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

HONORABLE JUDGE JOE S. GRAY , JUDGE
(Superior Court Trial Judge)

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Statement of Issues Presented for Review

The issues presented for review are;

(a) Respondents to the Appeal in the Court of Appeal for the Third Appellate District filed a "Respondent's Appendix" that violated provisions of California Court Rules on Appeal in that the "Respondent's Appendix" contained non conforming documents from a totally different Superior Court case than the Superior Court case appealed from.

(b) Respondents to the Appeal in the Court of Appeal for the Third Appellate District filed a "Respondent's Brief" wherein Respondent made reference to the non conforming documents contained in the "Respondent's Appendix" which violated provisions of California Court Rules on Appeal in that the

referenced documents contained therein are from a totally different Superior Court case than the Superior Court case appealed from.

(c) Appellant timely brought a "Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief".

(d) The Third District Court of Appeal denied Appellant's "Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief".

(e) Appellant, after denial of "Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief", timely filed an "Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief" wherein Appellant stated with particularity that if she was not allowed to file a non conforming appendix and brief, as the Respondent was allowed to do by the Appellate Court not ordering Respondent to correct or strike his "Respondent's Appendix" or "Respondent's Brief" on Appellant's motion to so correct or strike, she would be seriously prejudiced.

(f) The Appellate Court denied Appellant's "Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief".

(g) The Appellate Court issued a ruling denying Appellant's Appeal and issuing sanctions against Appellant based on Respondent's non conforming "Respondent's Appendix" and "Respondent's Brief". (See Exhibit 1 Appellate Court Decision attached hereto)

(h) Previous issues (a) - (g) were raised on Petition for Rehearing in the Court of Appeal for the Third Appellate District.

(i) The Petition for Rehearing on previous issues (a) - (g) was denied by the Court of Appeal for the Third Appellate District

Appropriate for Review under Rule 29

Issues (a) - (g) **and** the denial of Petition for Rehearing under Issues (h) & (i) have subjected Appellant to being denied substantive and procedural due process, accordingly, this Petition for Review meets the criteria under Rule 29 (1) and is further

supported by the following Statement of Facts in Support of Petition for Review.

Statement of Facts in Support of Petition for Review

1 Respondent supplied to the Third District Court of Appeal a RESPONDENT'S SUPPLEMENTAL APPENDIX wherein was contained non conforming documents that did not pertain to the Sacramento Superior Court case 95AS00452 appealed from .

2 On March 26, 1998 Appellant filed a document styled **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief",** wherein Appellant sought to strike the non conforming non pertinent documents contained in RESPONDENT'S SUPPLEMENTAL APPENDIX. (See the Court file for case #3 CIVIL CO27837 for date March 26, 1998)

3 On April 7, 1998 the court issued a ruling stating that Appellant's **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief",** is deferred pending calendaring and assignment of the panel. (See the Court file for case #3 CIVIL CO27837 for April 7, 1998 date)

4 On April 30, 1998 Appellant filed with the Court of Appeal for the Third Appellate District a document styled **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** wherein Appellant requested that if the Court of Appeal for the Third Appellate District does not rule on her **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"** until after her Reply Brief is filed, she be given leave to file a non conforming Reply Appendix and Reply Brief. (See the Court file for case #3 CIVIL CO27837

for April 30, 1998 document **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief" page 2 lines 9-13**)

5 On May 27, 1998 Appellant's **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"** was denied by the Court of Appeal for the Third Appellate District. (See the Court file for case #3 CIVIL CO27837 for May 27, 1998 order)

6 The Court of Appeal for the Third Appellate District Ruling of December 8, 1998 denied Appellant's deferred **"Notice of Motion to Correct, (Strike), Portions of Respondent's Supplemental Appendix and Portions of Respondent's Brief"** (See Exhibit 1, Ruling attached hereto, page 17 footnote 5)

7 Accordingly, Appellant has been severely prejudiced by the Court of Appeal for the Third Appellate District accepting the non conforming non pertinent documents supplied by Respondent, (See Exhibit 1, Ruling attached hereto, page 17 footnote 5), and not allowing Appellant the opportunity to file papers in opposition thereto as she requested leave to do in her document styled **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"**.

8 The documents Appellant would have offered in opposition to the non conforming non pertinent documents that the Court of Appeal for the Third Appellate District allowed Respondent to file would have included rulings from the United States District Court for the Eastern District of California and other relevant documents that would have shown that Respondents non conforming and non pertinent documents allowed by the Court of Appeal for the Third Appellate District, (See Exhibit 1, Ruling attached hereto, page 17 footnote 5), would not have supported an interpretation by the Court of Appeal for the Third Appellate District that said documents "demonstrate that Parrett has engaged in a campaign of

harassment and delay, thereby supporting Mize's request for sanction on appeal". (See Exhibit 1, Ruling attached hereto page 17 footnote 5)

9 The papers that Appellant would have provided to the Court of Appeal for the Third Appellate District, if that Court would have granted Appellant's **"Application for Leave to File a Non Conforming Reply Appendix and for Leave to File an Amended Reply Brief"**, would have shown that the non conforming non pertinent documents that were supplied by Respondent were in fact for the **purpose of delay and harassment of Appellant** and will more than act as an offset to the $5,000.00 sanctions levied against Appellant.

Summary

10 Appellant was sanctioned $5,000.00, (Ruling attached hereto), by the Court of Appeal for the Third Appellate District based on the non conforming and non pertinent documents that the Court allowed Respondent to include in his "Respondent's Appendix" and to be referred to in his "Respondent's Brief".

11 The record shows that the Court of Appeal for the Third Appellate District did not allow Appellant the opportunity to augment her "Appellant's Appendix" or to file an "Amended Reply Brief" in opposition to the non conforming documents it, the Court of Appeal for the Third Appellate District , allowed Respondent to include in his "Respondent's Appendix" as referred to in his "Respondent's Brief' and on which the Court of Appeal for the Third Appellate District based it's decision to levy sanctions against Appellant.

12 The action of the Court of Appeal for the Third Appellate District in sanctioning Appellant $5,000.00 based on non conforming and non pertinent documents contained in "Respondent's Appendix" and "Respondent's Brief", which were

allowed by the Court of Appeal for the Third Appellate District, while the Court of Appeal for the Third Appellate District refused to allow Appellant her Constitutional Right to file written augmented opposition to the non conforming and non pertinent documents contained in "Respondent's Appendix" and "Respondent's Brief", is an action in derogation to the California Constitution and the Constitution of the United States , to wit;

Legal

13 Article I Section Seven (7) of the California Constitution states;

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws;

Article II Section One (1) of the California Constitution states;

§ 1. Supremacy of federal constitution

The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.

Amendment V of the United States Constitution states;

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law;** nor shall private property be taken for public use, without just compensation.

Amendment XIV Section 1 of the United States Constitution states;

Section 1. [Citizenship - Due process of law - Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

14 Pursuant to the facts stated herein, the Court of Appeal for the Third Appellate District has ordered Appellant to be deprived of $5,000.00 property without due process guaranteed to Appellant under the California Constitution Article I Section Seven (7) (a) and Article II therein and the United States Constitution Amendments V and XIV.

Relief Requested

15 Appellant requests this court take the appropriate steps to reverse or modify the December 8, 1998 decision by the Court of Appeal for the Third Appellate District.